BEFORE THE FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C.

In the Matter of	)	
Developing a Unified Intercarrier	)	CC Docket No. 01-92
Compensation Regime	)	
	)	

REPLY COMMENTS OF THE NEW MEXICO PUBLIC REGULATION COMMISSION CONCERNING THE FEDERAL BENCHMARKINGPROPOSAL

Pursuant to the Federal Communications Commission's ("FCC's") Order of February 16, 2007 in the above docket, extending the deadline for the filing of initial comments to March 28, 2007 and reply comments to April 12, 2007 in response to an ex parte letter[1] filed with the FCC regarding an amendment to the Missoula Plan for the adoption of a federal benchmarking proposal(herein after referred to as the "FBM"), the New Mexico Public Regulation Commission (NMPRC) hereby submits its Reply Comments regarding the FBM. . Previously, on February 1, 2007, the NMPRC filed reply comments to the Missoula Plan.

I. INTRODUCTION

In its previous reply comments, The NMPRC stated it was particularly concerned about the following effects of the Missoula Plan: (1) the adverse impact of new or increased Federal subscriber line charges ("SLCs") and

[1] See February 16, 2007 FCC Public Notice in CC. Docket No. 01-92, FN 2.

surcharges on ratepayers, especially residential ratepayers who make relatively few toll calls; (2) effectively requiring ratepayers in states like New Mexico that already have reduced intrastate access rates to subsidize such reductions in other states; (3) unequal treatment of different classes of carriers, with potentially anti-competitive effects; (4) failing to address phantom traffic and arbitrage problems in the most effective and efficient way; and (5) purported preemption of state authority over intrastate rates. The present NMPRC comments on the Federal Benchmarking Proposal complement the previous reply comments on the Missoula Plan filed by the NMPRC in this docket.

II. FEDERAL BENCHMARKING PROPOSAL

The objective of the proposed FBM is to provide additional funding for early adopter states that otherwise would benefit less financially after the reductions in intrastate access rates called for by the Missoula Plan than states that have previously taken no action to reduce intrastate switched access and rebalance rates. The FBM also makes the “large assumption” that States with high residential rates that will benefit from the plan “presumably” have rebalanced rates. This could be a flawed assumption.

III. THE IMPACT OF NEW OR INCREASED SUBSCRIBER LINE CHARGES AND OTHER SURCHARGES ON RATEPAYERS

Adoption of the proposed FBM would only exacerbate the adverse impact of subscriber line charges and other surcharges on New Mexico ratepayers by increasing the Federal USF to $800 million from the $200 million proposed in the original Missoula Plan -- a 300% increase. Every dollar of this increase in the Federal USF is to be absorbed by ratepayers. New Mexico is an early adopter state and therefore would be eligible to receive some offsetting compensation under the FBM proposal. However, the New Mexico USF obligations will be offset by less than half[2] ($10 million) through the FBM refund. Therefore, New Mexico ratepayers will still be required to carry the obligation of paying the remaining 56% of the SUSF ($12 million) and 96% of the $18 million State SLC while paying out an additional $24.5 million in Federal USF charges and SLC increases. This clearly indicates New Mexico ratepayers with the adoption of the Missoula FBM would pay substantially higher residential rates than they pay now. Although the plan does address further reductions in access rates, the FBM proposal still guarantees revenue neutrality for carriers who reduce those rates, and there is still no corresponding guarantee in the plan that those carrier cost savings will be passed onto ratepayers through cheaper tolls to offset the additional fixed costs that will appear largely on residential

[2] The New Mexico Commission estimates that the proposed Federal Benchmark proposal and associated refund mechanisms will offset the New Mexico State Universal Service Fund by approximately $9.4 million out of a current balance of $22 million, and will decrease the New Mexico SLC by $630,000 from $1.78 to $1.72 for a total offset of approximately $10 million. The NMSUSF will then be $12 million (SUSF charge reduced from 3% to 1.7% of intrastate revenues).

customer's phone bills. Further, even if there were such an offset, the benefits of it would not accrue to customers with low toll usage, who often are relatively low income customers who can least afford it. The imposition of the Missoula Plan and the proposed FBM would only inflame an already out-of-control problem, how to contain the growth of the Federal USF[3] while imposing a significantly greater financial burden on residential consumers, particularly low income residential consumers.

IV. EARLY ADOPTOR STATES SUCH AS NEW MEXICO WILL STILL BE PENALIZED BY SUBSIDIZING RATE REDUCTIONS IN OTHER STATES. Although the FBM would provide some offsetting compensation to state universal service funds for early adopter states such as New Mexico, New Mexico consumers still would be required to pay more in universal service fund contributions. At the same time, these contributions would be reallocated, more going to the Federal USF and less going to the NMSUSF. This is simply a sleight of hand exercise. In the end, states that have not exercised the discipline of maintaining affordable local rates while reducing their intrastate access rates will still be rewarded by subsidies from those

[3] The Federal USF factor increased from 9.7% to 11.7% for the second quarter of 2007.

states that have reduced intrastate access rates and maintained affordable local rates. New Mexico has already successfully dealt with this issue; we have a smoothly functioning SUSF and have managed to maintain affordable local exchange rates, even though New Mexico has the 6th lowest population density in the United States[4].

V. UNEQUAL TREATMENT OF CLASSES OF CARRIERS, WITH POTENTIAL ANTI-COMPETITIVE EFFECTS.

The proposed FBM amendment addresses direct carrier payments to carriers in high rate areas in order to avoid additional Federal SLC increases. However, those carriers are still will be made whole under the Missoula Plan for reducing access rates, whereas competitive LECs will not. Therefore the FBM proposal does not resolve in any way the Commission's original concerns in this area.

VI. PHANTOM TRAFFIC AND ARBITRAGE PROBLEMS.

Since FBM amendment does not affect the original phantom traffic proposal in the Missoula Plan, the NMPRC's original reply comments on this issue also stand unchanged.

VII. PREEMPTION OF STATE AUTHORITY OVER INTRASTATE RATES.

[4]See http://en.wikipedia.org/wiki/List_of_U.S._states_by_population_density .

The FBM does not alter the Missoula Plan' proposed pre-emption of state authority in the setting of intrastate access rates but portends additional federal intrusion on states' statutory authority over intrastate ratemaking through a federal subsidy program affecting local exchange ratemaking by establishing local exchange benchmarks for all states. This appears to be the first step in an unlawful attempt to preempt state authority over the setting of intrastate retail local exchange rates. Accordingly, the NMPRC's previously stated concerns about the Missoula Plan's preemptive effects stand.

VIII. CONCLUSION

The New Mexico Public Regulation Commission respectfully requests that the FCC take into consideration the foregoing concerns regarding the Federal Benchmarking Proposal as it modifies or rejects the Missoula Plan. For the foregoing reasons, the NMPRC opposes not only many aspects of the original Missoula Plan proposal, but also the Federal Benchmarking Plan.

ADOPTED at Santa Fe, New Mexico, this 10th day of April, 2007.

NEW MEXICO PUBLIC REGULATION

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